

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Chaw-Chi Kung, et al.

v.

Case No. 04-cv-133-SM

Donna Kostandin

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ORDER

Re: Document No. 49, Defendant's Motion to Continue Trial

Ruling:

Granted, in part. The parties' joint motion to waive jury has been granted contemporaneously with this order. A bench trial can be scheduled with much greater flexibility than a jury trial, and, while, on balance, defendant is not entitled to a continuance on the grounds asserted, nevertheless, a brief continuance is in order for a combination of other reasons. First, plaintiffs are not likely to suffer any prejudice from a brief continuance because, to the extent plaintiff has identifiable assets capable of responding to any judgment (her interest in her home), plaintiffs have a prejudgment attachment. Moreover, counsel advise that the home is scheduled to be sold in the next two or three weeks, after which the equity available to satisfy a judgment, if any, will be known. Moreover, the trustee in bankruptcy is apparently claiming all of the equity on grounds that the home properly belongs to the bankrupt company owned by defendant's husband, and that she has no equitable interest at all. Plaintiffs might have their damages claims satisfied through settlement negotiations with this defendant and payment of some portion of their pending bankruptcy claim, or they may find that incurring further litigation expenses in this case would prove futile - if, for example, it should turn out that no assets are available to satisfy a judgment against this defendant. A brief continuance will result in a better grasp on

critical facts, and, should trial go forward, will not prejudice plaintiffs in any way. A bench trial (3 days ought to be sufficient) will be scheduled in January, 2006. Counsel shall advise Deputy Clerk Barrett on their availability in January, failing which the court will schedule a firm trial date as its docket allows. So Ordered.

  
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Steven J. McAuliffe  
Chief District Judge

Date: October 28, 2005

cc: Mary Notaris, Esq.  
Matthew Caffrey, Esq.